

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, CA 94105**

NOTICE OF PROPOSED ACTION

Communications Equipment Insurance Agent License

RH02026113

February 23, 2004

SUBJECT OF PROPOSED RULEMAKING

Insurance Commissioner John Garamendi proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to add sections 2194 through 2194.8 of Article 11 to Subchapter 1 of Chapter 5 of Title 10 of the California Code of Regulations.

PUBLIC HEARING

A public hearing has been scheduled in connection with this proposed action for Wednesday, May 5, 2004 starting at 1:00 PM at the Department of Insurance, 45 Fremont Street, San Francisco, CA in the 22nd Floor Hearing Room. Should there be no persons arriving by one-half hour from the start of the public hearing or additional persons arriving by one-quarter hour from the last commentor, the public hearing will close. The sole purpose of this hearing is to address the merits of the proposed regulations. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department of Insurance ("Department") requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at hearing.

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code sections 1758.6 through 1753.693. Section 1 of A.B. 2856 (Stats. 2002, ch. 437) provides the Insurance Commissioner with authority for this rulemaking.

WRITTEN COMMENT PERIOD

Any interested person or authorized representative may submit written comments on the proposed regulations to the Commissioner during the public comment period. **The public comment period will close at 5:00 PM on May 5, 2004.** The Commissioner will only consider comments received at the Department of Insurance offices by that time. Send comments to the contact person below.

CONTACT PERSON

All written comments or inquiries concerning the proposed regulations and requests for copies of the proposed text may be directed to:

Julie D. Soo, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4429

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

Karen Switzer, Associate Analyst
California Department of Insurance
320 Capitol Mall, 1st Floor
Sacramento, CA 95814
Telephone: (916) 492-3014

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided that they are sent to the following e-mail address: sooj@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided that they are directed to the attention of Julie D. Soo and sent to the following facsimile number: (415) 904-5490. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law makes it a crime to act or assume to act in a capacity for which a production agency license is required without having such a license. Assembly Bill 2856 (Chavez) of 2002 (Chapter 437, Statutes of 2002), effective January 1, 2003, added Article 16.1, commencing with section 1758.6, to Chapter 5 of Part 2 of Division 1 of the Insurance Code, creating a new category of production agency license and expanding the scope of activities for which a license is required. Thus, this addition to the Insurance Code expands the scope of an existing crime. Regulations are necessary to advise applicants of the requirements for the Communications Equipment Insurance Agent License and to establish the guidelines and fees necessary for the acceptance of applications by the Department of Insurance ("Department").

Emergency regulations were first adopted and approved by OAL to be effective July 11, 2003. These emergency regulations were re-adopted and received approval by OAL to be effective November 10, 2003. During the phase of these permanent regulations, the Department will seek a second re-adoption of the emergency regulations.

Critical operational concerns have resulted in unanticipated delays in promulgating permanent regulations. The lower than expected number of applications and the consequent revenue shortfall has caused the Department's Licensing Services Division to re-evaluate the application process, along with a continued assessment of internal and State budget concerns.

Additionally, telephone inquiries from the public concerning the regulations appear to attempt to expand the statute and regulation outside the intended scope, including roadside service. Roadside service is construed to be part of a motor club service and those intending to do such business have been advised to look into motor club licensing currently required by the Department of Insurance. Those attempting to cover communications equipment under the guise of membership clubs have been advised to apply for the Communications Equipment Insurance License because the effect and scheme fall directly under the elements of insurance.

While the Department anticipates that many issues will be resolved through public hearing, the public hearing may also raise additional problem areas. The Department also anticipates that it may have to forecast some problem areas in order to incorporate additional consumer protections and licensing requirements into the permanent regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commissioner has made the following initial determinations:

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY

Except for cost to the Department of Insurance for implementing the Communications Equipment Insurance Agent License program, the Commissioner has determined that the proposed regulations will result in no cost or savings to any State agency. As disclosed in the Economic and Fiscal Impact Estimate/Form 399, the Budget Office for the Department of Insurance anticipates that the Department will be able to absorb the costs associated with implementing the mandates of this licensing program. Most of the costs will be offset by the licensing fee. Original estimates since the initial adoption of the Emergency Regulations effective July 11, 2003 are currently relied upon even though applications received to date reflect a shortfall of estimated applications and consequently, a shortfall of revenue. The Department's Licensing Bureau has recently received an increase in the number of inquiries concerning the Communications Equipment Insurance Agent License and the Department anticipates that the number of applications will likely reach original estimates, particularly in light of additional publicity surrounding promulgation of permanent regulations.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT

The Commissioner has determined that the proposed regulations will result in no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES

The Commissioner has determined that the proposed regulations will result in no other non-discretionary cost or savings imposed on local agencies.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

The Commissioner has determined that the proposed regulations will result in no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

To the extent that these regulations provide for an optional insurance product line to vendors that choose to market Communications Equipment Insurance, the economic impact is a cost-benefit choice to be made by an individual business. The Commissioner has determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the health, safety, or welfare of the people of this State that proposed section 2194.6, which requires record maintenance and retention subject to production for examination by the Commissioner, apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently doing business within the State. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

SMALL BUSINESS DETERMINATION

The Commissioner has not identified any alternatives that would lessen any adverse impact on small business. To the extent that these regulations provide for an optional insurance product line to vendors that choose to market Communications Equipment Insurance, the economic impact is a cost-benefit choice to be made by an individual business.

CONSIDERATION OF ALTERNATIVES

Pursuant to Government Code section 11346.5(a)(13), the Commissioner must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose of the proposed regulations, and that no alternative would be as effective or less burdensome to private persons or businesses directly affected that these regulations.

The Commissioner invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the public hearing or written comment period.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

AVAILABILITY OF TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above San Francisco address, between the hours of 9:00 AM and 4:30 PM, Monday through Friday. As of the date of publication in the Notice Register, the rulemaking file consists of this Notice, the Text of the proposed regulations, and the Initial Statement of Reasons.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's Website at www.insurance.ca.gov; click 'Legal Information' located on the right hand side column of 'Quick Links' of the opening screen. At the top of the 'Legal Information' page, click the 'Proposed Regulations' link. Enter "RH02026113" or "Communications Equipment Insurance Agent License" as the search term. For those without Web access, documents are available from the contact person at the fax number listed.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

If modifications are made to the text of the proposed regulations, the modified text, with changes indicated, will be made available to the public for at least 15 days prior to the date on which the Commissioner adopts the amendments. Requests for copies of any modifications should be sent to the contact person at the address indicated above. The Commissioner will accept written comments on the modified text for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

When available, a copy of the Final Statement of Reasons can be obtained from the Department's Website at www.insurance.ca.gov. For those without Web access, documents are available from the contact person at the fax number listed.

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